

**DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2020-063



FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the case after receiving the completed application on January 8, 2020, and assigned the case to the Deputy Chair to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated October 1, 2021, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST AND ALLEGATIONS

The applicant, a former Lieutenant Commander (LCDR/O-4) who retired from the Coast Guard on December 31, 1989, asked the Board to correct his DD-214 by changing his date of entry from May 17, 1978, to May 27, 1975. He argued that his date of entry on his DD-214 is incorrect due to a typographical error.

To address the delay in his application, the applicant stated that he did not notice the alleged error on his DD-214 until November 31, 2019, when he was organizing his records. He acknowledged that he did not find the alleged error sooner due to an oversight on his part.

SUMMARY OF THE RECORD

Before serving in the Coast Guard, the applicant served as an officer in the Army from April 20, 1969, until he was honorably discharged on September 27, 1974.

On May 16, 1975, the applicant received a letter from the Commandant regarding his appointment as a Lieutenant Junior Grade (LTJG) in the Coast Guard Reserve. The letter stated that if he accepted his appointment, he would serve for an indefinite term.

On May 21, 1975, the applicant received a letter from the Commandant regarding orders to serve on extended active duty. The letter stated that effective upon his execution of his oath of office, the applicant would be called to serve on extended active duty in excess of six months with pay and allowances.

On May 27, 1975, the applicant signed an acceptance and oath of office to accept an appointment as an LTJG in the Coast Guard Reserve.

On May 16, 1978, the applicant was honorably discharged from the Coast Guard Reserve. His DD-214 shows that he had served two years, eleven months, and twenty days of net active service for this period.

The following day, on May 17, 1978, the applicant accepted a commission in the regular Coast Guard. On December 31, 1989, the applicant retired after more than twenty years of active service in the military. His DD-214 shows that he had served eleven years, seven months, and fourteen days of net active service during this last period. His DD-214 also shows that he served eight years, four months, and twenty-eight days of prior active service.

The applicant's Statement of Service dated January 1, 1990, shows that he completed fourteen years, seven months, and four days of active duty in the Coast Guard. His Statement of Service also shows that he had previously served on active duty for five years, five months, and eight days in the Army.

VIEWS OF THE COAST GUARD

On April 2, 2020, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion in which she recommended that the Board deny relief in this case and adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

PSC argued that the applicant failed to show that the Coast Guard committed an error or injustice. PSC speculated that the applicant likely does not have a copy of his first DD-214 from the Coast Guard documenting his service from May 27, 1975, to May 16, 1978. As such, PSC argued that the applicant incorrectly believes that his second DD-214 from the Coast Guard should include the period of service captured on his first DD-214.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On April 9, 2020, the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within thirty days. In his response, the applicant stated that he disagrees with the advisory opinion. He argued that his final DD-214 fails to recognize his active duty service from May 1975 to May 1978.

The applicant explained that he entered the Coast Guard Reserve under the Direct Commission Program with a three-year active duty contract. He stated that during the three-year period, he had the option of joining the regular Coast Guard if he completed certain courses and was promoted to Lieutenant. In May 1978, he fulfilled all of the requirements and accepted a

commission in the regular Coast Guard. However, the applicant maintained that he was never discharged from the Coast Guard Reserve.

APPLICABLE LAW AND POLICY

Article 1.A.1.c. of the manual for preparing DD-214s, COMDTINST M1900.4B, discusses which personnel are eligible to receive a DD-214:

c. Personnel Continuing on Active Duty. The DD Form 214 will be furnished to members while serving on active duty when they have a change of status or component as follows:

(2) Officers.

(a) Reserve appointment terminated to accept appointment in the Regular Coast Guard.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions based on the applicant's military record and submissions, the Coast Guard's submission and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552.
2. An application to the Board must be filed within three years after the applicant discovers the alleged error or injustice.¹ The applicant stated that he discovered the alleged error in November 2019, but the record shows that the applicant retired from the Coast Guard and received his DD-214 on December 31, 1989. Therefore, the preponderance of the evidence shows that his request for correction is untimely.
3. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so.² In *Allen v. Card*, 799 F. Supp. 158 (D.D.C. 1992), the court stated that the Board should not deny an application for untimeliness without "analyz[ing] both the reasons for the delay and the potential merits of the claim based on a cursory review"³ to determine whether the interest of justice supports a waiver of the statute of limitations. The court noted that "the longer the delay has been and the weaker the reasons are for the delay, the more compelling the merits would need to be to justify a full review."⁴ Pursuant to these requirements, the Board finds the following:
 - a. The applicant did not explain or justify why he waited more than thirty years after his discharge to request correction of his military record. The Board finds that the applicant failed to show that anything prevented him from seeking correction of the alleged error or injustice more promptly.
 - b. A cursory review of the merits of this case shows that the applicant's claim lacks potential merit. The applicant's record shows that he served on extended active duty as an

¹ 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22.

² 10 U.S.C. § 1552(b).

³ *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

⁴ *Id.* at 164, 165; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

officer in the Coast Guard Reserve from May 27, 1975, to May 16, 1978. The applicant's record also shows that on May 17, 1978, he accepted a commission in the regular Coast Guard. According to Article 1.A.1.c. of the manual for preparing DD-214s, COMDTINST M1900.4D, Reserve officers who served on active duty and whose appointment was terminated to accept an appointment in the regular Coast Guard received a DD-214. In this case, the applicant correctly received a DD-214 that shows that he entered active duty in the Coast Guard Reserve on May 27, 1975. While the applicant's service in the Reserve is captured on a separate DD-214 from his service as an officer in the regular Coast Guard, it is still recognized and documented as active duty service as evidenced by his first DD-214 and his Statement of Service dated January 1, 1990. The disputed record is presumptively correct,⁵ and the record contains no evidence that substantiates his allegations of error or injustice in his official military record.

4. Accordingly, the Board will not excuse the application's untimeliness or waive the statute of limitations to conduct a thorough review of the merits. The applicant's request should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁵ 33 C.F.R. § 52.24(b); see *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992) (citing *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979), for the required presumption, absent evidence to the contrary, that Government officials have carried out their duties "correctly, lawfully, and in good faith.").

